

G. Dave Teja
Attorney At Law
799 Plumas Street, Suite B
Yuba City, CA 95991

Telephone: 530-673-1383

Facsimile: 530-673-1381

July 16, 2009

Lori Okun, Staff Counsel
State Water Resources Control Board
Office of Chief Counsel
11020 Sun Center Drive
Rancho Cordova, CA 95670

Re: Wide Awake Mine

Dear Ms. Okun:

My clients and I join the objections of Sean K. Hungerford, who represents the Emma G. Trebilcott Trust, and Lawrence S. Bazel representing the Leals.

Your schedule is a "rush to judgement" in a case involving alleged pollution by numerous parties extending over a hundred years.

My clients presentation will require over 15 minutes, even though it is based on the facts they may be "dischargers" in the eyes of the law, but they should be able to provide evidence they actually had nothing whatsoever to do with the Wide Awake Mine except to have the misfortune of owning one acre in which the mine's tailings are located and perhaps significantly they have "viable successors" which are most recently mentioned in Mr. Pulupa's fax of July 16, 2009.

Please extend the time for this hearing. Even if the Governor decides against the furlough, there would not be enough time for the numerous Respondent's to realistically defend themselves under you schedule.

Very Truly Yours,

G. Dave Teja

GDT:lmc

CC: By e-mail

Okun.HQpo2.SecDom1@waterboards.ca.gov, Lbazel@briscoelaw.net, dlawler@ca.blm.gov, gsharpe@ca.blm.gov, rdwhiteaker@comcast.net, shungerford@diepenbrock.com, gerald.george@pillsburylaw.com, nsimoffice@sbcglobal.net, JEMello@waterboards.ca.gov, jhuggins@waterboards.ca.gov, jkarkoski@waterboards.ca.gov, vizzo@waterboards.ca.gov, Ppulupa@waterboards.ca.gov.

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G. Dave Teja, SBN 032014
799 Plumas Street, Suite B
Yuba City, CA 95991
Telephone: 530-673-1383
Facsimile: 530-673-1381

Attorney for CAL SIERRA
PROPERTIES

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REAGION

RE: WIDE AWAKE MERCURY MINE
No. R5-2009-xxxx

POINTS AND AUTHORITIES

David Brown, Roy Tate, and their wives, possibly, Merced General Construction, Inc., etal are "viable successors" to CAL SIERRA PROPERTIES, hereafter "CAL SIERRA". These persons and entities succeed CAL SIERRA in ownership of the property on which the mine is located, hereafter "the property," and some, or all of them, appear to still own the property. Declarant is informed and believes and on information and belief, avers, these persons and entities are actively engaged in business.

These parties assumed the ownership of the property and any liability for the mine on September 1, 1997, when CAL SIERRA transferred its interest in the property.

Webster's Ninth New Collegiate Dictionary defines "viable" as, among other things, "capable of existence and development as an independent unit."

The successors in interest of CAL SIERRA acquired exactly the interests of CAL SIERRA in the property and are

capable of existence and development of the property as an independent unit.

The successors are all "viable successors" of CAL SIERRA.

The WATER QUALITY CONTROL BOARD has referred to several Water Code provisions which support CAL SIERRA's position the "viable successors" would be liable instead of CAL SIERRA if anyone is liable at all.

Section 13267(b) of the Water Code, refers, in part, to "any person who has discharged ... waste" CAL SIERRA is not such a "person."

Section 13267(c) refers, in part to , "Consent of the owner or possessors of the facilities." Cal sierra is not such an "owner or possessor."

From the facts and law, it is clear that (1) CAL SIERRA PROPERTIES is not a discharger, or (2) having transferred the property, CAL SIERRA is protected by virtue of having created viable successors.

Respectfully submitted July 10, 2009

A handwritten signature in black ink, appearing to read "G. Dave Teja", with a stylized flourish at the end.

G. DAVE TEJA, Attorney
for Respondent CAL SIERRA
PROPERTIES

G. Dave Teja, SBN 032014
799 Plumas Street, Suite B
Yuba City, CA 95991
Telephone: 530-673-1383
Facsimile: 530-673-1381

Attorney for Cal Sierra
Properties

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

RE: WIDE AWAKE MERCURY MINE

No. R5-2009-xxxx

Declaration of ROY D. WHITEAKER

ROY D. WHITEAKER declares as follows:

I am a former partner in CAL SIERRA PROPERTIES, hereafter "CAL SIERRA." I am married to GLADYS WHITEKER and all references to "my wife" are to her.

The real property in Colusa County, hereafter "the property" on which the Wide Awake Mine or Wide Awake Mercury Mine, hereafter "the mine," was located was purchased by CAL SIERRA PROPERTIES in 1997 and sold in 1999.

CAL SIERRA was a partnership whose partners were, at all times, my wife and me. It was dissolved in 1999 and has no existence at this time. CAL SIERRA purchased the property on which the mine was located hereafter "the property" solely as an investment opportunity.

CAL SIERRA's interest in the property consisted of a one half undivided interest in approximately 57 acres of mountain

property, which was divided into five (5) parcels.

The property, but no right to the mine, was purchased in 1997 and subsequently sold in 1999. The mine has been closed and covered for many years, well before CAL SIERRA acquired the property.

The CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD staff is apparently requiring the various property owners (from the first ever recorded to present owners) to develop a plan to clean up the mercury runoff from all the various properties that have drainage into nearby creeks.

At no time has CAL SIERRA or me or my wife developed the property, worked the property, mined the property, nor disturbed the physical nature of the property in any way.

CAL SIERRA did not own any of the mineral rights to the mine. Therefore, CAL SIERRA was not legally authorized to conduct any mining activity in the mine or on the property.

I was recently asked by e-mail for permission from the Regional Water Quality Control personal for permission to enter the property to inspect mineral content, and I informed them CAL SIERRA no longer owned the property, nor owned the mineral rights, and therefore I had no authority to grant permission for them to enter the property.

I have actually only been physically on the property on approximately three (3) occasions.

The primary concern appears to be the amount of mercury

runoff-drainage from the tailings of the mining activity back in the early 1990S in to Sulphur Creek and subsequently into Cache Creek. There are other old abandoned mines in the area also, I believe all are receiving the same attention.

I have also been informed that mercury content is high in the entire region and it is considered a natural element for that area. It has probably been draining into these creeks since the beginning. It appears to me is would be impossible to eradicate mercury from the area.

If a plan and clean-up is necessary, it would appear to me that the responsibility for the mercury content contained in the mining tailings would lie with the mining company(ies). Without their activity there would be no mercury in the mining tailings. They left the tailings, they should clean them up.

CAL SIERRA never owned any of the mineral rights. Therefore CAL SIERRA or my wife, or I could not authorize any mining activity on the property.

Information from North State Title Company indicates Merced General Construction, Inc., etal, may have some interest in the property.

The Regional Water Quality Control Board has a copy of the CAL SIERRA Deed to David Brown and Roy Tate and their wives.

In summary, my wife has never been on the property. Neither CAL SIERRA, nor my wife, nor I ever saw any mining activity on the property. The mine was closed. None of us ever owned the

mineral rights to the mine. None of us have ever discharged anything from the mine. CAL SIERRA has not in any way been a "discharger" of any contaminant on the property. CAL SIERRA sold the property on which the mine is located to David G. Brown and Roy Tate.

I declare under penalty of perjury that the foregoing is True and correct and executed at Yuba city, California on July 9, 2009.



Roy D. Whiteaker

PROOF OF SERVICE BY MAIL - CCP 1013a

I, Linda M. Cunningham, declare as follows:

1. I am the secretary for G. DAVE TEJA, Attorney At Law

2. I am over the age of 18, not a party to this cause, and employed in the county where the mailing took place.

3. My business address is 799 Plumas Street, Suite B, Yuba City, California 95991.

4. I served a copy of: **POINTS and AUTHORITIES dated July 10, 2009 and DECLARATION OF ROY D. WHITEAKER, dated July 9, 2009** by enclosing it in a sealed envelope and depositing the envelope:

☒ directly in the United States mail with postage paid;

or

☐ at my place of business for same-day collection and mailing with the United States mail, following our ordinary business practices with which I am familiar.

a. Date of deposit: **July 15, 2009**


b. Place of deposit: **Yuba City, California**

c. Addressed as follows:

(1) Terry King Brown, P.O. Box 246, Lima MT 59739; (2) David G Brown, P.O. Box 246, Lima MT 59739; (3) Leah Tate, 676 Magnolia Rd., Marysville, CA 95901; (4) Roy Tate, 676 Magnolia Rd., Marysville, CA 95901; (5) Pamela Creedon, Executive Officer, 11020 Sun Center Dr., Ste. 200, Rancho Cordova, CA 95670; (6) Kenneth Landau, Asst. Executive officer, 11020 Sun Center Dr., Ste. 200, Rancho Cordova, CA 95670; (7) Lori Okun, Staff Counsel, State Water Resources Control Board, Office of Chief Counsel, 1001 I St., Sacramento, CA 95814; (8) Joe Karoski, Assistant Executive Officer (Acting), 11020 Sun Center Dr., Ste. 200, Rancho Cordova, CA 95670; (9) Victor Izzo, Senior Engineering Geologist, 11020 Sun Center Dr., Ste. 200, Rancho Cordova, CA 95670; (10) Jeffery Huggins, Water Resource Control Engineer, 11020 Sun Center Dr., Ste. 200, Rancho Cordova, CA 95670;

1 (11) Home Stake Mining Company, Reoresented by Gerald F. George,
2 P.O. Box 7880, San Francisco, CA 94120-7880; (12) Emma G.
3 Trebilcott Trust, Represented by Sean K. Hungerford, 400 Capitol
4 Mall, Suite 1800, Sacramento, CA 95814; (13) Robert Leal, P.O.
5 Box H, Yuba City, CA 95992-0768; (14) NBC Leasing, Inc., Thomas
6 E. Nevis, 317 Teegarden Ave, Yuba City, CA 95991; (15) US Bureau
7 of Land Management, Gary Sharpe, Asst. Field Office Manager,
8 Ukiah Field Office, 2550 North Street, Uriah, CA 95482; (16)
9 Charles Millard Tracy, 462-075 Clear Creek Dr., Westwood, CA
10 96137-9437; (17) James Dale Whitaker, 9235 Briarhurst, Dallas, TX
11 75243-6137; (18) Glen Mills, Inc., Beverly M. Mills, Agent for
12 Service of Process, 203 Court St., Woodland, CA 95695; (19)
13 Merced General Construction, Inc., 644 E. Olive Avenue, Madera,
14 CA 93638; (20) Jill Leal, P.O. Box H, Yuba City, CA 95992-0768;
15 (21) Sally C. Whitaker, 9235 Briarhurst, Dallas, TX 75243-6137
16 (22) Janet Dee Tracy, 462-075 Clear Creek Dr., Westwood, CA
17 96137-9437

18
19 4. I declare under penalty of perjury under the laws of
20 the State of California that the foregoing is true and correct
21 and this declaration is executed at Yuba City, California on **July**
22 **15, 2009.**

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Linda M. Cunningham